

***R v Robertson* [2019] VSC 145 (6 March 2019) – Victorian Supreme Court**

‘Factors affecting risk’ – ‘Following, harassing and monitoring’ – ‘Physical violence and harm’ – ‘Social abuse’ – ‘Technology facilitated abuse’

Charges: Murder x 1.

Case type: Sentence.

Facts: The defendant pleaded guilty to murder of his partner (the deceased) with whom he fathered a daughter. After their daughter’s birth, their relationship became strained. The defendant resented the deceased’s change of employment and her being around other men. He became jealous and constantly concerned about possible infidelity. The deceased’s behaviour became more obsessive and paranoid. He even set up a fake Facebook and Instagram account to contact the deceased’s work colleagues under the fake name to establish if anything was happening between the deceased and her male colleagues ([3]-[11]). After a heated argument in which the deceased expressed her desire to end the relationship, the defendant picked up a dumbbell bar and hit her multiple times to her face and head. The blows, forceful and vicious, killed her immediately. After committing the offence, the deceased rang his mother and admitted to his actions. His mother rang the police ([12]-[19]).

Issues: The Court determined the appropriate sentence for the offence of murder in the circumstances.

Decision and reasoning: Champion J sentenced the defendant to 24 years’ imprisonment, taking into account general and specific deterrence, denunciation, rehabilitation and protection of the community. His Honour considered the defendant’s personal circumstances at [39]-43]. The defendant grew up in a close, supportive and loving family. Through his job he was able to buy a home for himself, thus demonstrating his independence and self-sufficiency. Friends and family observed that he became agitated and alienated after his daughter was born.

Champion J did not accept a complete lack of premeditation even though the defendant committed the offence in a highly emotional state. The ‘savagery’ of the assault affected the sentencing. The act in question was terrible and grossly violent. It was not fleeting and involved multiple deliberate blows to the face and head. His Honour noted the defendant’s intention to kill. An aggravating feature was the fact that she was his intimate partner ([65]-[66]). Champion J therefore concluded that his offending was a grave example of murder and above the middle range of seriousness ([67]). However, it was noted that the extreme violence was out of character as there was no evidence of previous domestic violence incidents ([90]).

Champion J discussed his culpability and degree of responsibility at [68]-[73]. The offending occurred in the context of the defendant being extremely jealous, possessive and controlling. At [73] Champion J stated: 'I note that these features of jealousy, the need to possess, and uncontrollable rage associated with extreme violence emerge too frequently in cases of the murder of an intimate female partner.' The attack was described as grievously inappropriate and a wildly disproportionate response to the situation. Therefore, his culpability and degree of responsibility was within the higher range. A mitigating factor was the fact that the defendant admitted to killing the deceased very soon after the act, and thus his Honour found that it he should receive the full benefit of that early plea as it facilitated the course of justice and relieved the deceased's family and friends from having to give evidence and endure the trauma of a trial ([76]). With these factors in mind, his Honour accepted that the defendant has positive prospects of rehabilitation.